

# **APPENDIX A**

## **MINUTES**

### **ISSUES SUBCOMMITTEE STUDYING SECURED LEAVE POLICIES FOR TRIAL AND APPELLATE ATTORNEYS**

**March 12, 2021**

The Subcommittee met on Friday, March 12, 2021 at 2:00 p.m. over Zoom. Members of the Subcommittee attending were Gordon Brown, Chair, Dionne Fortner, Katherine Frye, Kevin Kiernan, Bill Mills, Mel Wright, and Drew Erteschik. Also attending were State Bar officers Colon Willoughby, Past President, Barbara Christy, President, Marcia Armstrong, Vice-President, Darrin Jordan, President-Elect, and Alice Mine, Secretary. State Bar staff attending the meeting included Savannah Perry, Deputy Counsel, Cameron Lee, Deputy Counsel, and Katherine Jean, General Counsel.

The Subcommittee members were informed of their duty to avoid conflicts of interest and were asked if anyone knew of any personal conflicts or appearance of conflict with respect to the matter to be discussed in accordance with the State Government Ethics Act. None of the Subcommittee members reported a conflict of interest.

Gordon Brown, Chair, began the meeting by asking each of the members to introduce themselves and state their reason for volunteering to be a part of this subcommittee.

Savannah Perry, Deputy Counsel, next covered the results of an informal survey circulated to the members of the Subcommittee prior to the first meeting.

The Subcommittee then discussed sending a more refined survey to a broader, more diverse group of lawyers to assess the following areas:

- how lawyers have historically utilized secured leave periods;
- what impact utilizing secured leave periods has on the mental health of trial lawyers in the profession;
- how well the current secured leave rules are working;
- in what respects the current secured leave rules could be improved;
- what, if any, adverse impacts the current secured leave rules have on our state trial and appellate courts; and
- whether there is a rationale for extending secured leave to practitioners before administrative agencies.

The Chair appointed a working group of Katherine Frye, Darrin Jordan, and Kevin Kiernan to refine the original survey to be disseminated among a larger pool of participants.

The Subcommittee also discussed other potential stakeholders and identified the following entities, representatives of which the Subcommittee wishes to invite and involve in studying this issue:

- Appellate Rules Committee (Drew Erteschik);
- Administrative Law Judge(s) from Office of Administrative Hearings (Drew Erteschik);
- Lawyers' Assistance Program Board (Darrin Jordan);
- Trial Court Administrators and Trial Court Coordinators (Darrin Jordan);
- NC Conference of Superior Court Judges (Mel Wright);
- NC Conference of District Court Judges (Mel Wright);

Cameron Lee, Deputy Counsel, next reported to the Subcommittee the staff counsel's plan to survey secured leave policies in other jurisdictions by sending an email to the listserv available through the National Organization of Bar Counsel. Lee also indicated that State Bar staff plan to review the local rules in different North Carolina districts and courts and report on the ways our courts are supplementing the existing Rules.

Meeting adjourned.

**MINUTES**  
**ISSUES SUBCOMMITTEE STUDYING SECURE LEAVE POLICIES FOR TRIAL AND**  
**APPELLATE ATTORNEYS**

**April 1, 2021**

The Subcommittee met on Thursday, April 1, 2021 at 2:00 p.m. by Zoom. Members of the Subcommittee attending were Gordon Brown, Chair, Walter Brock, Dionne Fortner, Mark Henriques, Kevin Kiernan, Mel Wright, and Drew Erteschik. State Bar staff attending the meeting included Savannah Perry, Deputy Counsel and Cameron Lee, Deputy Counsel.

The Subcommittee members were informed of their duty to avoid conflicts of interest and were asked if anyone knew of any personal conflicts or appearance of conflict with respect to the matter to be discussed in accordance with the State Government Ethics Act. None of the Subcommittee members reported a conflict of interest and recused themselves from the meeting.

Gordon Brown, Chair began the meeting by taking a vote to approve the minutes of the Subcommittee's Friday, March 12, 2021 meeting. The Subcommittee unanimously voted to approve the minutes from the meeting by oral vote.

Brown next reviewed the working list of areas that the Subcommittee plans to assess and the working list of stakeholders to be identified and solicited for their input and participation in this study. The following stakeholders were discussed:

- Lawyers Assistance Program
  - o Robynn Moraites, Director of the Lawyers Assistance Program suggested Shelley Buckner. Gordon Brown indicated that he would contact Buckner.
- Administrative Office of the Courts
  - o David Hoke indicated to Gordon Brown that AOC does not track or manage secure leave. AOC appreciates the current advance notice requirement as it is helpful in scheduling special sessions of court.
- NC Conferences of Superior Court and District Court Judges
  - o Mel Wright spoke with the head Superior Court judge Phyllis Gorham who indicated that she had a generally favorable view of secure leave, had not had any issues or questions regarding secure leave, and believed that superior court judges state-wide generally shared her views;
  - o Mel Wright had also placed a call to the head District Court judge Cheri Elliott and was waiting to speak with her about the Subcommittee's work.
- Administrative Judges and Appellate Rules
  - o Gordon Brown has reached out to Administrative Law Judge Julian Mann;
  - o Drew Erteschik is serving as the Chair of the Appellate Rules Committee for about two more months. Thereafter, Justice Barbara Jackson will take his role as Chair. Erteschik proposed that he serve as liaison between the Appellate Rules Committee and the Subcommittee on Secure Leave.

Savannah Perry, Deputy Counsel, next discussed with the Subcommittee the groups of lawyers to whom a short information survey related to the current secure leave policies should be circulated. Perry also discussed with the Subcommittee the survey platform to be used to disseminate the survey. The Chair

requested that the working group of Katherine Frye, Darrin Jordan, and Kevin Kiernan finish refining the original survey by the end of the April quarterly meeting. The Subcommittee then discussed expanding the list of entities to whom the survey would be sent to include:

- Members of the State Bar Council;
- NC Advocates for Justice;
- The Association of Defense Lawyers;
- Association of Women Attorneys;
- The North Carolina Association of Black Lawyers; and
- The following sections of the North Carolina Bar Association:
  - o Litigation
  - o Appellate
  - o Young Lawyer's Division
  - o Construction/Land Use
  - o Administrative Law
  - o Domestic Law
  - o Criminal Law

Cameron Lee, Deputy Counsel, next reported to the Subcommittee on policies affecting attorney leave that exist in similarly situated southeastern states of Virginia, Florida, and Georgia.<sup>1</sup>

Meeting adjourned.

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<sup>1</sup> A summary of the report is appended to these minutes.

## **MINUTES**

### **ISSUES SUBCOMMITTEE STUDYING SECURE LEAVE POLICIES FOR TRIAL AND APPELLATE ATTORNEYS**

**May 3, 2021**

The Subcommittee met on Monday, May 3, 2021 at 10:00 a.m. by Zoom. Members of the Subcommittee attending were Gordon Brown, Chair, Katherine Frye, Walter Brock, Dionne Fortner, Mark Henriques, Mel Wright, Drew Erteschik, and Shelli Buckner. State Bar staff attending the meeting included Savannah Perry, Deputy Counsel and Cameron Lee, Deputy Counsel.

The Subcommittee members were informed of their duty to avoid conflicts of interest and were asked if anyone knew of any personal conflicts or appearance of conflict with respect to the matter to be discussed in accordance with the State Government Ethics Act. None of the Subcommittee members reported a conflict of interest and recused themselves from the meeting.

Gordon Brown, Chair began the meeting by taking a vote to approve the minutes of the Subcommittee's Thursday, April 1, 2021 meeting. The Subcommittee unanimously voted to approve the minutes from the meeting by oral vote.

Brown next reviewed the working list of areas that the Subcommittee plans to assess. There were no changes to the list of areas for assessment. With respect to information coming from the stakeholders list, there was no new information to report.

Savannah Perry, Deputy Counsel, next discussed the final draft of the survey the Subcommittee plants to send to the various interest groups identified at the Subcommittee's April 1 meeting. Mark Henriques, member, suggested a change to question 6 of the survey to add an option indicating that taking secure leave improved the respondent mental health. The Subcommittee adopted Henriques' suggestion and approved the final draft of the survey. Brown indicated he had contacted the heads of the various interest groups identified by the Subcommittee at the April 1 meeting, and that they had uniformly expressed a willingness to participate in the survey. The Subcommittee tasked staff counsel with implementation and dissemination of the survey.

Cameron Lee, Deputy Counsel, next reported to the Subcommittee on policies affecting attorney leave that exist in California and Texas.

The Subcommittee then addressed possible additions and amendments to the current secure leave policy. The Subcommittee agreed that the minimum length of the secure leave period should be changed from one calendar week to a minimum of two or three consecutive days. The Subcommittee also agreed that the rule should provide for additional days of secure leave, rather than three calendar weeks. In addressing possible additions and amendments, the Subcommittee discussed whether these changes could be abused or weaponized by lawyers and how the policy might be amended to guard against that possibility, if it exists. The Subcommittee discussed that an abuse of the secure leave policy could be an ethics issue. Even if it does not rise to the level of a Rules violation, abuse of the secure leave rules could be a professionalism violation. The Subcommittee agreed to continue discussing possible additions and amendments that would be helpful for majority of the profession and not allow a potential bad apple to derail benefits for others.

Additionally, a number of members suggested the addition of specific procedures governing requests for medical leave. Mel Wright informed the Subcommittee the original architects of the secure leave policy never intended for attorneys to be forced to use secure leave for medical leave. The Subcommittee agreed to consider the issue of medical leave at its next meeting.

Meeting adjourned.

**MINUTES**  
**ISSUES SUBCOMMITTEE STUDYING SECURE LEAVE POLICIES FOR TRIAL AND**  
**APPELLATE ATTORNEYS**

**June 8, 2021**

The Subcommittee met on Monday, June 8, 2021 at 10:00 a.m. by Zoom. Members of the Subcommittee attending were Gordon Brown, Chair, Walter Brock, Mark Henriques, Mel Wright, and Shelli Buckner. State Bar staff attending the meeting included Savannah Perry, Deputy Counsel.

The Subcommittee members were informed of their duty to avoid conflicts of interest and were asked if anyone knew of any personal conflicts or appearance of conflict with respect to the matter to be discussed in accordance with the State Government Ethics Act. None of the Subcommittee members reported a conflict of interest and recused themselves from the meeting.

Savannah Perry, Deputy Counsel, presented and discussed the preliminary results of the survey sent to various interest groups identified at the Subcommittee's April 1<sup>st</sup> meeting. Perry reported leaders of three interest groups indicated on June 7, 2021 they were just disseminating the survey. The responses received so far, mostly from Councilors, showed much promise. It is expected that there will be many more responses by the time the survey closes at the end of June. The results will be discussed at the July meeting.

Walter Brock, member, noted the preliminary responses do not show a significant concern about abuse of the rules. Accordingly, the concern expressed in prior meetings about the potential for abuse should not drive the Subcommittee's decisions moving forward.

The Subcommittee then addressed possible reforms. The Subcommittee agreed a guiding principle is secure leave is intended to be used for vacations. To the extent an attorney needs time to deal with medical issues or other life event matters, the attorney should seek such leave from the trial court as provided by Rule 26(h).

The Subcommittee next discussed in depth these issues:

- Should the rule secure leave has to be taken in three blocks measured from Sunday to Saturday be retained?
- If not, how many blocks should be allowed?
- Should there be a minimum number of days in a secure leave block?
- If the minimum leave duration policy is changed, should the "straddle rule" (Rule 26(b)(1)) be modified?
- How are minimum secure leave blocks to be measured? For example, if a court holiday falls between the beginning and end of a designated secure leave period, does the court holiday count as a secure leave day for purposes of computing the total remaining secure leave available?



The Subcommittee had good discussions of a range of answers to these questions and a general consensus concerning the answers is in process.

The Chair stated the goal for the Subcommittee's July meeting is to get through the Subcommittee's issues abstract included in the meeting materials. Issues to be discussed in July include, but are not limited to, when to submit secure leave requests and whether the current prohibition against an attorney noticing a deposition during an opposing counsel's secure leave designation should be expanded to address discovery requests and subpoenas.

The Chair ended the meeting by taking a vote to approve the minutes of the Subcommittee's Monday, May 3, 2021 meeting. The Subcommittee unanimously voted to approve the minutes from the meeting by oral vote.

Meeting adjourned.

**MINUTES**  
**ISSUES SUBCOMMITTEE STUDYING SECURE LEAVE POLICIES FOR TRIAL AND**  
**APPELLATE ATTORNEYS**

**6 July 2021**

The Subcommittee met on Tuesday, 6 July 2021 at 2:00 p.m. by Zoom. Members of the Subcommittee attending were Gordon Brown, Chair, Walter Brock, Mark Henriques, Kevin Kiernan, Mel Wright, and Katherine Frye. State Bar staff attending the meeting included Savannah Perry, Deputy Counsel, Cameron Lee, Deputy Counsel, and Alice Mine, Executive Director.

The Subcommittee members were informed of their duty to avoid conflicts of interest and were asked if anyone knew of any personal conflicts or appearance of conflict with respect to the matter to be discussed in accordance with the State Government Ethics Act. None of the Subcommittee members reported a conflict of interest and recused themselves from the meeting.

The Subcommittee members unanimously voted to approve the minutes from the 8 June 2021 meeting by oral vote.

Savannah Perry, Deputy Counsel, presented and discussed in detail the results of the survey sent to various interest groups identified at the Subcommittee's 1 April 2021 meeting.

Cameron Lee, Deputy Counsel, discussed research he is presently conducting into whether and how the Local Rules of the several judicial districts address secure leave.

Walter Brock, member, discussed the feasibility of a unified electronic filing system. Cynthia Blackwell from AOC has expressed a willingness to work with the subcommittee to make possible state-wide electronic filing of secure leave notices.

The Subcommittee then addressed possible reforms. The Subcommittee agreed a guiding principle is secure leave is intended to be used for vacations. To the extent an attorney needs time to deal with medical issues or other life event matters, the attorney should seek such leave from the trial court as provided by Rule 26(h).

The Subcommittee next discussed in depth these issues:

- Requirements in the notice of designation of secure leave, including:
  - Whether a lawyer should be required to account for prior allowances of secure leave;
  - Representation that the leave period is not taken for the purpose of interfering with the timely disposition of any proceeding; and
  - Representation that the lawyer designating leave has taken adequate measures to protect the interests of their clients during the leave period.

- Where a lawyer should submit their designation of secure leave for a particular class of cases (*e.g.*, criminal, civil, special proceedings, etc.).
- Whether the 90-day notice period for designations of secure leave should be modified, and whether provision should be made for districts where trial dates are scheduled up to a year in advance.
- Whether Rule 26 should include a procedure for rescinding or modifying pending secure leave designations.
- Whether secure leave should extend beyond court proceedings to depositions, discovery responses, responses to subpoenas, etc.
- Whether there is a need for changes to Rule 33.1 of the Rules of Appellate Procedure.

The Subcommittee had good discussions of a range of answers to these questions and a general consensus concerning the answers is in process.

The Chair stated the goal for the Subcommittee's July meeting is to get through the Subcommittee's issues abstract included in the meeting materials. Issues to be discussed in August include, but are not limited to, solidifying the subcommittee's consensus concerning prospective changes to Rule 26, and the impact of local rules on the implementation of Rule 26.

Meeting adjourned.

## **MINUTES**

### **ISSUES SUBCOMMITTEE STUDYING SECURE LEAVE POLICIES FOR TRIAL AND APPELLATE ATTORNEYS**

**10 August 2021**

The Subcommittee met on Tuesday, 10 August 2021 at 2:00 p.m. by Zoom. Members of the Subcommittee attending were Gordon Brown, Chair, Walter Brock, and Mark Henriques. State Bar staff attending the meeting included Savannah Perry, Deputy Counsel, and Cameron Lee, Deputy Counsel.

The Subcommittee members were informed of their duty to avoid conflicts of interest and were asked if anyone knew of any personal conflicts or appearance of conflict with respect to the matter to be discussed in accordance with the State Government Ethics Act. None of the Subcommittee members reported a conflict of interest and recused themselves from the meeting.

The Subcommittee members voted to approve the minutes from the 6 July 2021 meeting. The Subcommittee members unanimously voted to approve the minutes by oral vote.

Cameron Lee, Deputy Counsel, summarized his research into whether and how the Local Rules of all the North Carolina judicial districts address the implementation of secure leave.

Walter Brock, member, provided a promising update on the feasibility of a unified electronic filing system. According to Brock, AOC believes the technology being implemented for the eCourts initiative can also accommodate state-wide electronic filing of secure leave notices. Brock reported his AOC contract seemed enthusiastic about the prospect of collaborating on such a project. To take next steps, the State Bar should submit a formal written request to the AOC for a feasibility assessment and implementation plan.

The Subcommittee then reviewed a first draft of revised Rule 26. A lively discussion – ensured during which the attempted infiltration of an Oxford comma was rebuffed and the syntactic economy of Hemmingway was adopted as the gold standard. Several important areas were identified for further discussion and deliberation at the next meeting.

Meeting adjourned.

Post adjournment meetings:

There having been an abnormal number of scheduling conflicts for the August meeting, several Subcommittee members requested post-adjournment catch up meetings with the Chair. For the record, the Chair had catch up calls with Shelli Buckner, with Drew Erteschik, and with Mel Wright. Deputy Counsel Lee and Perry were present for the Chair's call with Wright.

## **MINUTES**

### **ISSUES SUBCOMMITTEE STUDYING SECURE LEAVE POLICIES FOR TRIAL AND APPELLATE ATTORNEYS**

**31 August 2021**

The Subcommittee met on Tuesday, 31 August 2021 at 2:00 p.m. by Zoom. Members of the Subcommittee attending were Gordon Brown, Chair, Katherine Frye, Walter Brock, Mark Henriques, Mel Wright, Shelli Buckner, and Drew Erteschik. State Bar staff attending the meeting included Cameron Lee, Deputy Counsel.

The Subcommittee members were informed of their duty to avoid conflicts of interest and were asked if anyone knew of any personal conflicts or appearance of conflict with respect to the matter to be discussed in accordance with the State Government Ethics Act. None of the Subcommittee members reported a conflict of interest and recused themselves from the meeting.

The Subcommittee members voted to approve the minutes from the 10 August 2021 meeting. The Subcommittee members unanimously voted to approve the minutes by oral vote.

Cameron Lee, Deputy Counsel, summarized his research into whether and how the Local Rules of all the North Carolina judicial districts address the implementation of secure leave.

Walter Brock, member, provided another promising update on the feasibility of a unified electronic filing system. To take next steps, the State Bar should submit a formal written request to the AOC for a feasibility assessment and implementation plan.

The Subcommittee then reviewed a second draft of revised Rule 26. After a productive discussion, the Subcommittee members arrived at a final draft of revised Rule for possible submission to the full Issues Committee at the State Bar's October Quarterly Meeting.

Gordon Brown, Chair, agreed to make parallel changes to drafts of revised Appellate Rule 33.1 and 26 NCAC 03.0119 and circulate them among the Subcommittee members for review and comment in advance of the Bar's October Quarterly Meeting.

Meeting adjourned.

Chair's Note: Updated drafts of all rules (Rule 26, 33.1 and 26 NCAC 03.0119) were sent to Subcommittee members September 20, 2021. No additional revisions have been requested although two conforming grammatical changes have been made.